

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

LOI TAN NGUYEN,

Plaintiff,

v.

NMT MEDICAL, INC.

Defendant.

Civil Action No. 04-CV-11781-DPW

**MOTION TO STAY DISCOVERY AND
MODIFY SCHEDULING ORDER**

Pursuant to Fed. R. Civ. P. 16(b) and Local Rule 16(G), Defendant NMT Medical, Inc. (“NMT”) hereby moves this Court to stay discovery and modify the Scheduling Order entered on June 16, 2005 (the “Scheduling Order”). In support of this motion, NMT states the following:

- (1) On June 16, 2005, the Court ordered that the case be referred to Magistrate Judge Alexander for further mediation.
- (2) After NMT contacted the Court’s ADR program to schedule a mediation date, the Court issued a Second Order of Referral to ADR Program on August 22, 2005. Thereafter, NMT contacted the ADR program to schedule a mediation date.
- (3) On August 26, 2005, the parties received notice that the mediation will take place on December 20, 2005 before Magistrate Judge Joyce London Alexander.
- (3) The Scheduling Order provides for all discovery to be completed by January 6, 2006 and sets forth additional deadlines throughout the case.
- (4) The outcome of the pending mediation may eliminate the need for discovery altogether. Under the circumstances, the interests of economy and efficiency would be best

served to stay discovery until the pending mediation occurs and then modify the Scheduling Order if necessary.

(5) The additional requested time prejudices neither party nor any other person. NMT has filed this motion, not for purposes of delay, but to afford the parties an opportunity to conduct discovery only if necessary.

WHEREFORE, NMT respectfully requests the Court to allow this motion and stay discovery and modify the Scheduling Order as follows:

(1) stay discovery until the mediation before Magistrate Judge Alexander has occurred; and

(2) after the mediation has occurred and if it is unsuccessful, expand the Scheduling Order to include an additional three (3) months for all deadlines in the Scheduling Order, except the deadline referenced in Section 1 of such Order.

(3) In the alternative, NMT requests that the Court order an earlier mediation date so that the parties can complete discovery after the mediation has occurred.

LOCAL RULE 7.1(A)(2) CERTIFICATION

Pursuant to Local Rule 7.1(A)(2), counsel for NMT certify that they contacted Plaintiff on September 1, 2005 in an attempt to resolve or narrow the issues addressed in this Motion, but

could not reach agreement on the issues involved in this Motion.

Respectfully submitted,

NMT Medical, Inc.

By its attorneys,

/s/ Julie Murphy Clinton
Jessica A. Foster (BBO# 636841)
Julie Murphy Clinton (BBO# 655230)
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Dated: September 1, 2005

CERTIFICATE OF SERVICE

I, Julie Murphy Clinton, hereby certify that on September 1, 2005, I caused a copy of the foregoing document to be served electronically upon plaintiff Loi Tan Nguyen.

/s/ Julie Murphy Clinton